

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 05-10489-MEL

GLENN S. BATES,	*
Plaintiff	*
 v.	
TOWN OF HARWICH, HARWICH POLICE	*
DEPARTMENT, CHRISTOPHER KENDER,	*
and BARRY MITCHELL	*
Defendants	*
	*

**DEFENDANTS', TOWN OF HARWICH AND HARWICH POLICE DEPARTMENT,
LOCAL RULE 56.1 STATE OF UNDISPUTED MATERIAL FACTS OF RECORD**

The Defendants, Town of Harwich and Harwich Police Department, adopts and incorporates by reference the Local Rule 56.1 Statement of Co-Defendants, Christopher Kender and Barry Mitchell. In addition, the Defendants, Town of Harwich and Harwich Police Department, submit the following additional undisputed facts:

41. At the time of the incident, in addition to the Use-of-Force Policy enacted by the Massachusetts Police Institute, the Harwich Police Department followed Harwich Police Department Police Manual, Section 1. Rules and Regulations. Subsection 15 addressed the use of Firearms and stated, "Police officer are authorized to use firearms in life-threatening situations, when there is no other reasonable alternative available, but shall comply strictly with prescribed departmental procedure for the use of such force."
- Exhibit 3 to Harwich Police Chief William Mason deposition transcript attached hereto as ***Exhibit "O"*** and Deposition testimony of Harwich Police Chief William Mason, page 28 attached as ***Exhibit "P"***.

42. The Harwich Police Department's Use-of-force policy is a guide for officers to perform their duties to the most professional manner. ***Exhibit "P"***, page 47.
43. On an annual basis, the Harwich Police Department's firearms instructor reviews its Use-of-Force Policy with its officers before qualifications. ***Exhibit "B"***, page 104.

Respectfully submitted,

/s/ Charles D. Mulcahy
Charles D. Mulcahy
Wynn & Wynn, P.C.
90 New State Highway
Raynham, MA 02767
(508) 823-4567
BBO #359360

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EXHIBIT "O"

EXHIBIT

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TAG 4/27/06

HARWICH POLICE DEPARTMENTPOLICE MANUALSECTION I. RULES AND REGULATIONSA. INTRODUCTION

The following Rules and Regulations are adopted for the government of the Harwich Police Department and for the direction and guidance of its officers. Personnel guidelines are a necessity in any organization if it is to effectively achieve the purposes for which it is established. This is particularly true in a police agency where the reputation of the organization is fundamentally dependent upon the personal conduct and professional competence of its individual officers. Although this Manual is especially directed to the officers of the police department, it is expected that all civilian employees will adhere to, and be guided by, all rules, regulations and procedures consistent with the positions they hold and with their duties and functions in the department.

The delivery of police services to a community is a unique and complex undertaking. It requires police officers who possess a high degree of stability, sound judgement, physical and moral courage, fidelity and personal integrity. It requires that police officers conduct themselves at all times within the limitations of their police authority. They cannot act outside of, above or beyond their lawful authority and any abuse of their police powers violates the authority entrusted to them.

It cannot be expected that the contents of this Manual of Rules and Regulations will cover all situations or emergencies that may arise. By the very nature of police work, police officers in the field must perform their duties independently and with a minimum of direct supervision. Their own intelligence, practical experience, prudent discretion and common sense will often be their only available guidelines in carrying out their responsibilities.

This Manual consists of three sections as follows:

Section I, entitled "Rules and Regulations", outlines rules of conduct and defines the standards of behavior expected of all department personnel

Section II, entitled "Duties by Rank and Assignment", contains job descriptions for all department positions.

Section III, entitled "Policies and Procedures", provides basic guidelines for the performance of specific police duties and responsibilities.

11. Duty Outside of the Community - Officers of the Department shall not be detailed to perform duty outside of the community limits in another city or town, except to assist the police authorities of that city or town to suppress disorder or to preserve the peace, (or to work extra-paid details during off duty hours), under the direction of the Commanding Officer of the police department involved. Any such request for assistance from other cities and towns, and the approval for such assistance, must be acted upon in accordance with M.G.L. Chapter 41, Sec. 99. The officers of this Department, so detailed, shall have the authority of a police officer in that city or town and shall have the same immunity and privileges as when acting within their own community.

12. Reporting for Duty - All officers shall report for duty promptly at the time and place required by their assignment or as otherwise directed by the Chief or their commanding officer. They shall be properly uniformed and suitably equipped, ready to immediately assume their duties at the assigned time. While on duty, they shall avoid any activities not directly related to their police responsibilities and shall not absent themselves from duty without leave.

Officers unable to report for duty because of sickness or injury shall notify, or cause to be notified, the commanding officer, whenever possible, at least two hours prior to their next tour of duty, except in cases of emergency.

13. Duty Status - Although officers of the force are assigned specific hours of regular duty, they shall be considered "on-duty" at all times for the preservation of the public peace and the protection of life and property, and shall be prepared to take all REASONABLE POLICE ACTION to accomplish this purpose. All serious matters of public concern shall receive appropriate attention, even though an officer is not on duty at the time.

An officer, who becomes involved in a police action, outside his regular working hours, shall notify the police dispatcher and/or the commanding officer of the incident and request that an incident card be assigned. The officer will be required to complete a report on the incident.

14. Care and Security of Firearms - All officers shall maintain their service firearms in good working order at all times and report any damage, loss or unserviceable condition immediately to their commanding officer. All officers shall be personally responsible for the security and safekeeping of their service firearms at all times and shall not alter or repair any part of their service firearms without the approval of the Chief or their commanding officer.

All officers, prior to processing a prisoner or incapacitated person, in the booking room, will secure their service firearms in the security locker provided.

15. Firearms, Use of - Police officers are authorized to use firearms in life-threatening situations, when there is no other reasonable alternative available, but shall comply strictly with prescribed departmental procedures for the use of such force. The use of firearms is the highest degree of force that an officer may apply and is the most crucial official decision he will ever make. An officer shall never brandish a firearm, or display it unnecessarily at any time.

15a. Firearms Qualification - Each officer and employee issued and or required to carry a firearm will be further required to meet Mass Criminal Justice Training Council Qualification Standards at least twice per year. Firearms training will be scheduled at least three (3) weeks prior to the qualification date established, to accommodate those who may require additional training or those who may be on vacation during the original training dates. An officer or employee, required to undergo additional training, to meet qualification standards, will be required to do so at his/her own expense unless waived by the Chief of Police. An officer or employee, failing to meet or maintain firearm qualification status will not be permitted to carry a departmental firearm, past the qualification date, or perform any police enforcement duties including extra paid details. An officer or employee failing said qualifications may be subject to suspension and or dismissal based upon his/her inability to perform the duties of a police officer.

✓ 16. Home Address and Telephone - All officers and employees shall have a telephone in their place of residence, or where they can be reached, and shall report any change of telephone number or home address to their commanding officer within 24 hours of such change. The home telephone numbers or home addresses of officers and or employees, shall not be given out to anyone outside of the Department, without the authorization of a superior officer. In the event of an emergency request, the telephone number will be called with a notification to call the person making the emergency request.

17. Identification - All officers shall properly identify themselves to any person requesting this information, while they are on duty, except when the withholding of this information is necessary for the performance of police duty, when it might jeopardize the physical safety of a department member, or when authorized not to do so by proper authority. Under M.G.L. Chapter 41, Sec. 98D, every full-time police officer is required to carry an official identification card to be shown to the public upon lawful request.

18. Knowledge of the Community - Every officer shall familiarize himself with the geography of the community, including routes of public transportation, the location of streets, highways, bridges, public buildings and places, hospitals, courts, transportation offices and stations, prominent or important office buildings, large industrial plants or commercial establishments, and such other information as may be disseminated by his superior officers from time to time.

1 record.)

2 Q (By Mr. Donoghue) Chief, I'm placing
3 before you Exhibit 3, entitled, "Rules
4 and Regulations of the Harwich Police
5 Department." Can you tell me, is that a
6 complete version of the rules and
7 regulations that were in effect when
8 this incident took place?

9 (Witness reviewed document.)

10 A No, sir, it's not, it's the part
11 specifically -- well, there's other
12 sections in there, but it was provided
13 dealing with firearms and firearms
14 qualifications; it's the section dealing
15 with that.

16 Q Okay. Is that all of the text regarding
17 the use of firearms that was in effect
18 on the date of this incident?

19 A As I said, in the MPA generic manual,
20 there was some additional information in
21 there on the use of firearms; it's
22 basically fine-tuned that information.
23 And the MPA generic manual was accepted
24 in its entirety by the previous chief.